



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

Regulatory Guidance on Hours of Service of Drivers Rest Break Requirement; Drivers Who Become Ineligible for the “Short-Haul” Exception during the Duty Day

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Regulatory guidance.

SUMMARY: This regulatory guidance addresses application of the 30-minute break rule to interstate drivers of commercial motor vehicles (CMVs) who begin their duty days as “short haul” drivers exempt from the break rule, but who occasionally exceed the short haul distance or time limits. Such drivers are then subject to the break requirement and must prepare a record-of-duty-status (RODS) for the day. The intent of the break rule would be satisfied if drivers in these situations take a break at the earliest safe opportunity after exceeding the short haul limits and explain in a RODS annotation why the rest break was not taken within the required 8 hours of the last off-duty break of at least 30 minutes.

DATES: Effective Date: This regulatory guidance is effective **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 provides that "The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards for equipment of, a motor private carrier, when needed to promote safety of operation" [49 U.S.C. 31502(b)]. This guidance is based on the Secretary's authority to regulate maximum hours of service.

The Motor Carrier Safety Act of 1984 (MCSA) requires the Secretary to prescribe safety standards for CMVs. At a minimum, the regulations must ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operator [49 U.S.C. 31136(a)(1)-(4)]. Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) [Pub. L. 112-141, 126 Stat. 405, 818, July 6, 2012] enacted a fifth requirement, i.e., that the regulations ensure that (5) an operator of a CMV is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of a regulation promulgated under § 31136, Chapter 51 [Transportation of Hazardous Material], or chapter 313 [Commercial Vehicle Operators]. This guidance clarifies the applicability of a portion of

the hours-of-service (HOS) regulations based on authority of § 31136(a)(1), (2) and (4); it is unrelated to § 31136(a)(5) and only peripherally related to § 31136(a)(3).

The MCSA also gives the Secretary broad power to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate” [49 U.S.C. 31133(a)(8) and (10)]. Clarification of the regulations is an “appropriate” act. The functions vested in the Secretary by the Motor Carrier Act of 1935 and the MCSA have been delegated to the FMCSA Administrator by 49 CFR 1.87(i) and (f), respectively.

Background

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its HOS regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule adopted several changes to the HOS regulations, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver’s last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

On August 2, 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion on petitions for review of the 2011 HOS rule filed by the American Trucking Associations, Public Citizen, and others [American Trucking Associations, Inc.,

v. Federal Motor Carrier Safety Administration, No. 12-1092 (D.C. Cir. Aug. 2, 2013)].

The Court upheld the 2011 HOS regulations in all respects except for the 30-minute break provision as it applies to short haul drivers. By guidance effective August 2, 2013, FMCSA has declared that it would no longer enforce the break rule against any driver that qualifies for either of the “short-haul operation” exceptions in 49 CFR 395.1(e)(1) or (2) [See www.fmcsa.dot.gov/documents/HOS/30-minute-guidance.pdf]. Section 395.1(e) defines two categories of drivers who qualify as being engaged in short-haul operations: the “100 air-mile radius driver” and “operators of property-carrying CMVs not requiring a commercial driver’s license (CDL).” To qualify for the exception, the 100 air-mile radius driver must remain within a 100 air-mile radius of the normal work reporting location, return to that location at the end of the duty day, and be released from duty within 12 consecutive hours of the beginning of the duty day. The operator of a property-carrying CMV not requiring a CDL must remain within a 150 air-mile radius of the normal work reporting location and must return to that location at the end of the duty day.

Drivers meeting the requirements to qualify for the short haul exception in § 395.1(e) are not required to maintain the standard RODS (“logbooks”) described in § 395.8.

Reason for This Guidance

Occasionally, a CMV driver will begin the duty day fully expecting to meet all the requirements of “short-haul operations” as defined by §395.1(e). Nevertheless, circumstances beyond the driver’s control may arise and result in operations that do not meet those requirements. For example, a driver engaged in short-haul operations would

no longer qualify for that exception if he or she is unable to remain within the required radius of operation (100 or 150 air-miles), or, in the case of the 100 air-mile radius driver, when a CMV driver cannot complete the duty day within 12 hours of its start.

When the driver first learns of the changes to his or her itinerary and subsequent ineligibility for the short-haul exemption, the driver may have already missed the first mandatory rest break of the break rule; i.e., more than 8 hours may have elapsed since the driver was last off duty, or in the sleeper berth, for at least 30 minutes. To address this issue, FMCSA advises that in such situations, the driver should not be considered to be in violation of the break rule. The driver should annotate the RODS to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity. Ideally, this would be prior to preparing the RODS or immediately following the preparation of the RODS. Under FMCSA's existing HOS requirements and guidance, drivers would begin preparing the RODS as soon as they determine they are no longer eligible for the RODS exemption.

Guidance

For the reasons explained above, FMCSA issues Regulatory Guidance Question 33 to § 395.1 of the FMCSRs:

PART 395—HOURS OF SERVICE OF DRIVERS

§ 395.1 Scope of rules in this part.

Question 33. If a driver using either short-haul exception in § 395.1(e) finds it necessary to exceed the exception limitations for unforeseen reasons, is the driver in violation of the § 395.3 rest break provision if more than 8 hours have passed without having taken the required rest break?

Guidance. No. A driver using a § 395.1(e) short-haul exception who finds it necessary to

exceed the exception limitations for unforeseen reasons, is not in violation of the § 395.3 rest-break requirements if 8 or more hours have passed at the time the driver becomes aware of the inability to use the short-haul exception. The driver should annotate the record-of-duty-status to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity.

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Anne S. Ferro,
Administrator.

[4910-EX-P]

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